

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

TIMOTHY CAPPS,	)	
Plaintiff,	)	
	)	AMENDED JUDGMENT
v.	)	
	)	No. 5:18-CV-133-FL
NEWMARK SOUTHERN REGION, LLC	)	
Defendant.	)	

**Decision by Court and Jury.**

That this action came before The Honorable Louise Wood Flanagan, United States District Judge, for bench trial September 29, 2020 and October 2, 2020 and defendant's motions for attorney fees and for bills of costs.

**IT IS ORDERED, ADJUDGED AND DECREED** in accordance with the court's orders entered December 22, 2020, and May 10, 2021 and for the reasons set forth more specifically therein, that judgment is entered in favor of defendant 1) on plaintiff's claims for breach of contract and breach of implied covenant of good faith and fair dealing, and 2) on defendant's counterclaim for breach of contract.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall recover from plaintiff \$767,085.88, on its counterclaim, subject to setoff by defendant of \$375,521.00 in withheld commissions due to plaintiff.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that defendant's motion for bill of costs is GRANTED in part. As the prevailing party, defendant Newmark Southern Region, LLC is awarded (1) \$225.80 in fees for service of the summons and subpoenas, pursuant to § 1920(1); (2) \$13,949.66 in costs for printed or electronically recorded transcripts necessarily obtained for use in the case, pursuant to § 1920(2); and (3) \$10,311.05 in fees for costs for exemplification and the costs of making copies of necessarily obtained for use in the case pursuant to § 1920(4). Total costs in the amount of \$24,486.51 are taxed against plaintiff Timothy Capps. Defendant's motion for attorney fees is GRANTED IN PART in favor of defendant in the amount of \$184,275.60, comprising an award of reasonable attorneys' fees.

**This Amended Judgment Filed and Entered on May 10, 2021, and Copies To:**

Caroline P. Mackie, David William Long, John P. Barry, Pietro A. Deserio, John Michael Durnovich (via CM/ECF Notice of Electronic Filing)

David A. Paul, Johnathan D. Sasser, Samantha Springer, Miguel Lopez, Nirav Shah (via CM/ECF Notice of Electronic Filing)

May 10, 2021

PETER A MOORE, JR., CLERK

/s/ Sandra K. Collins

(By) Sandra K. Collins, Deputy Clerk